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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 May 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Pakistan: all private courts should be declared illegal for protecting the women's rights

1. The Asian Legal Resource Centre (ALRC) would like to draw the attention of the UN Human Rights Council to the plight of Pakistani women. Despite making advances in many fields previously thought to be male dominated, women in Pakistan are actively discriminated against by a variety of state and non state actors, and subjected to violence without possibility of redress.

2. In Article 25, the Constitution of Pakistan states, "All citizens are equal before the law and are entitled to equal protection under the law and there shall be no discrimination on the basis of sex alone." Yet, Pakistani woman are subjected to institutional discrimination, violence, and religious intolerance. Violence against women is endemic, amidst a climate of impunity and State inaction. A gender-insensitive and dysfunctional criminal justice system has failed to protect women's rights. The government has been unable to ensure that justice is administered in fairness and equality and has thus failed to protect women and their fundamental rights. Apathy, in the State apparatus and in society has resulted in an increase in incidence of violence against women.

3. In recent years, Pakistan has promulgated certain laws for better protection of women. For instance, in 2014, the Senate passed the Anti-Rape Laws (Criminal Laws Amendment) Bill, 2014, and the Anti-Honour Killings Laws (Criminal Laws Amendment) Bill, 2014. However, to date no investigation has been conducted and no case filed in Court under the Acts. No change is expected to result even in the medium term from the new laws, given the history of law making and implementation through a criminal justice system that is corrupt and intrinsically sexist. The2010 Protection against Harassment of Women at the Workplace Act is but one example; It is poorly implemented, and has not changed the realities of women in Pakistan in the workplace.

4. As Pakistan is a self-declared Islamic country, a mindset persists that women should remain in a 7th century setting, in accord with Islamic beliefs of that time. Therefore, despite the new laws, impunity remains common in the following cases: acid attack, forced conversion to Islam, denial of property rights, honour killing, forced marriage, exchange of under-age girls through illegal feudal courts, gang-rape, rape in custody, dowry violence, abduction, forced prostitution, trafficking, and in the use of women to extract confessions from accused persons.

5. "Honour killings" are not legally authorized or pardonable. However, such crimes are often forgiven through a variety of means. "Honour killings" and the impunity that follows are an outcome of poor judicial administration. Take the case of Farzana Parveen[1]. On 26 May 2014Farzana, a pregnant Pakistani woman, was stoned to death by her own family outside a court in Lahore. Not all the persons involved were arrested but some involved in her stoning have been given death sentence on November 18 2014[2]. In latest development an outside court settlement is being persuaded according to the Sharia law of Qisas.

6. An illegal feudal court system, the Jirga, is a common tool used against women in tribal society. Higher courts in Pakistan have declared the Jirga as illegal. However, some parliamentarians from Baluchistan and Sindh especially those belonging to Marri, Jhakrani, Rind, Chandio, Magsi and Bhugti tribes, have been found to be participating in the conduct of Jirgas to settle petty private matters by exchanging underage girls and declaring that certain women should be killed in "honour killings" to deprive them their share of property. Through Jirgas, many women in remote areas are killed every year. Such killings have been carried out under the most barbaric of circumstances. In Jirgas, women are often charged with having an out-of-marriage relationship and others are suspected of planning love marriages, in direct opposition to arranged marriages. Such charges are often fabricated, and result in horrific murders. These killings have become a way of resolving property disputes. Male family members in tribal areas can resent losing property to another family through marriage, and scores are settled by punishing women through Jirgas.

[1] http //www humanrights asia/news/ahrc-news/AHRC-STM-104-2014/?searchterm=Farzana%20Parveen
[2] http //www bbc com/news/world-asia-30113128

7. In cases of honour killings those accused of murder are often acquitted. The Islamic provisions of Qisas and Diyat allow accused to go scot free. As the accused of the "honour killing" is often a father, brother or husband, he is easily pardoned by the next of kin or the complainant.

8. The judicial bigotry especially comes to the forefront in cases of honor killing for example in the case of Sarnia Sarwar who was murdered at her lawyer's office in Lahore by an assassin hired by her family. She was murdered for seeking a divorce from her estranged husband, who would abuse her physically as well as mentally. A charge of murder was filed upon which the accused filed for compromise based on the Islamic principle of Qisas and Diyat (Islamic criminal justice based on retribution and compensation) the judge, who could reject this application, agreed to the compromise between the parties. Judges themselves are gender insensitive and worse, biased. The indifference of the Judiciary towards women's rights has worsened the situation for women in Pakistan. The Judiciary allows compromises between parties in honour killings, terming it to be a "personal matter". The Pakistan Judiciary therefore colludes with the injustice that is taking place in Pakistan in the name of defending "honour".

9. Lack of political will is often a major hurdle in stemming the tide of violence against women. Many high profile cases of honor killing, such as Samia Sarwar's case, managed to come into the limelight due to the political affiliation of the parties involved. However, families with such political clout such as Samia, whose father was a head of the Khyber-Pakhtunkhwa Chamber of Commerce, manage to get away with the murder and justice gets buried with the victim. In the absence of the rule of law and a functioning prosecution system, representatives of the people, powerful people, enjoy impunity. The powerful know that the police and the Judiciary can be bought off, so they prey on the weaknesses of the authorities.

10. Women's security is especially threatened in the conflict zones of Khyber Pakhtunkhwa (KPK) Province and the Federally Administered Tribal Areas bordering Afghanistan. Here, women are subjected to state-sanctioned discrimination, violence, and sexual assault. Militants target women's rights activists, political leaders and development workers with impunity.

11. The Global Gender Gap Report (GGGR), 2014 ranked Pakistan second to last in gender equality, in access to health care, education and work. And, according to a 2014 report by the Human Rights Commission of Pakistan, the following cases of violence against women were noted: 597 women and girls were gang-raped; 828 raped; 923 women and 82 underage girls were victims of "honour" killings; seven women died in the acid attacks on 92 women and 13 minors; 60 women expired in other incidents like cylinder blasts, stove burnings, and setting the victim on fire.

12. Most of the time, the police are not informed about such incidents, while some of those reported to the police are not recorded in the police daily diary. Even if a few cases are lodged, inquiries are not properly conducted and the matter becomes a cold case. Negligence of police in initial investigation result in lack of judicial redress and injustice. Police are often unwilling to implement the law due to overwhelming social acceptance of the act and the influence of the power holders. Often they are reluctant to take the case forward, as most cases are settled out of court

13. The term "honour" in Pakistan elicits a strong emotional response, being literally a matter of life and death for Pakistanis. The term is invariably associated with women's bodies. While men may flaunt their masculinity, women are expected to be submissive to the demands of the father, brother, son, husband, or male guardian.

14. A report by the International Crisis Group (ICG) titled "Women, Violence and Conflict in Pakistan" released on April 8th 2015 says that discriminatory laws and dysfunctional criminal justice systems have put women in South Asian nations at grave risk. This document cites police officers not held accountable for failing to investigate gender-based crimes, and "discriminatory laws" which continue to deny women their constitutional right to gender equality, fueling religious intolerance and violence.

15. Human rights agencies in Pakistan have repeatedly emphasized that women falling prey to karo-kari ("honour killing") are often-times those wanting to marry of their own free will. In many cases, the victims have held properties that the male members of the family did not wish to lose should the women marry outside the family. Karo-kari murders relate to inheritance problems, feud-settling, or disposal of a wife in order to remarry.

16. Women from religious minority groups, particularly from the Hindu and Christian communities are especially subject to sexual violence. Girls from these communities suffer disproportionate acts of abduction and rape. When the perpetrators are caught, they claim that the girl had converted to Islam. In this way they are afforded impunity through the Courts in the name of spreading Islam.

17. In light of the above, the ALRC would like to recommend the following:

a) The UN should urge the Pakistan State to implement CEDAW and ICCPR in true spirit.

b) The UN should encourage the Pakistan government to initiate a countrywide dialogue that advocates equality between women and men together, with a comprehensive public campaign aimed at changing traditional attitudes.

c) The State should be asked to declare all kinds of private courts to be illegal, and enforce the same.

d) The State should be encouraged to consider affirmative action, in the form of a 33% quota for women must be implemented in the Judiciary, the police and all other institutions related to the criminal justice system to change the nature of discrimination within critical state institutions.